



**The Comptroller General
of the United States**

Washington, D.C. 20548

Carcio

Decision

Matter of: MRL, Inc.--Request for Reconsideration

File: B-235673.4

Date: August 29, 1989

DIGEST

1. Request for reconsideration which does not demonstrate that General Accounting Office erroneously found prior request for reconsideration untimely is denied.
2. Absent a showing of fraud or bad faith General Accounting Office does not review the refusal by the Small Business Administration to issue a certificate of competency to a small business.
3. Protest that agency imposed requirements on protester not contained in the solicitation is dismissed where there is no evidence in the record to support protester's position.
4. Protest that certain equipment should have been provided as government-furnished equipment or that the government should be obligated to assist the protester in obtaining the equipment is dismissed as untimely when not filed prior to the time set for bid opening.

DECISION

MRL, Inc., requests reconsideration of our decisions dismissing its protest and request for reconsideration concerning invitation for bids (IFB) No. DAHA44-89-B-0001, issued by the Department of the Army.

We deny the request for reconsideration.

The IFB was issued on December 6, 1988, for a Timed Entry/Exit Delay Unit (TE/EDU) for the Joint Services Interior Intrusion Detection System (J-SIIDS). MRL initially protested to our Office on May 26, 1989, that the Army was improperly rejecting MRL's low bid because the firm did not have a J-SIIDS in its facility to test the Entry/Exit unit. MRL complained that the J-SIIDS is manufactured exclusively for the government and that the

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requirement for a J-SIIDS is impossible to meet without government assistance. By letter dated June 5, MRL submitted a clarification to its protest in which MRL alleged that the contracting officer was improperly requiring MRL to have a J-SIIDS in its facility because this was not a requirement of the IFB.

On June 14, we dismissed MRL's protest because whether MRL, a small business, could comply with the testing requirement is a responsibility issue, and the Army had referred its nonresponsibility determination to the Small Business Administration (SBA) under its certificate of competency (COC) procedures. Since the SBA has exclusive authority to finally determine the responsibility of a small business, our Office generally does not review either the contracting officer's decision to refer a responsibility question to the SBA or the SBA's decision to issue or deny a COC. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(3) (1988).

On July 10, MRL received SBA's decision denying the firm a COC. On July 12, MRL requested that we reconsider our June 14 dismissal of the firm's protest because, according to MRL, the SBA addressed only the technical aspects of the solicitation and did not consider whether the IFB required bidders to have an in-house J-SIIDS. MRL also reiterated its belief that if the Army did require an in-house J-SIIDS, it should be required to assist MRL in obtaining one. We dismissed this request for reconsideration because under our Regulations, 4 C.F.R. § 21.12(b), a request for reconsideration must be filed within 10 working days after the requesting party knows or should know the basis for reconsideration. We issued our dismissal concerning the finality of SBA's COC determination on June 14 and for purposes of computing timeliness MRL was assumed to receive a copy of the dismissal by June 21, within 1 calendar week after it was mailed. Technology for Advancement, Inc., B-231058, May 12, 1988, 88-1 CPD ¶ 452. Since MRL's request for reconsideration was not filed until July 12, it was untimely.

Subsequently, on August 18, MRL filed its current request for reconsideration in which MRL asserts that its July 12 request for reconsideration was timely because it was based on the SBA's July 10 decision to deny MRL a COC.

We disagree that MRL's July 12 request for reconsideration is timely. Our June 14 notice dismissed MRL's protest because, as noted above, our Office does not review a contracting officer's decision to refer a responsibility issue to the SBA or the SBA's decision to grant or deny a

COC. Inter-Continental Equip., Inc., B-230266, Mar. 4, 1988 88-1 CPD ¶ 237. Since MRL knew this basis for our decision and thus the basis for reconsideration when it received our notice, which we assumed was no later than June 21, MRL's request for reconsideration received here on July 12 is untimely. In any event, to the extent MRL argues that the basis for its reconsideration is the SBA's refusal to deny MRL a COC, as stated, our Office does not review these determinations. Id.

We also note that insofar as MRL is protesting that the solicitation does not require the contractor to have an in-house J-SIIDS, there is no indication in the record that MRL's bid was rejected for this reason. In this regard, the IFB does require the contractor to test the TE/EDU when it is connected as a functional component of an operational J-SIIDS. The record shows that following a pre-award survey MRL was requested to submit a letter of intent or other written commitment from the source from which MRL intended to acquire the requisite testing capabilities. There is no indication, however, that MRL ever submitted this information. Thus, it appears that MRL was rejected because it did not demonstrate it could meet the testing requirement of the IFB, and not because it did not have an in-house J-SIIDS.

Finally, MRL's complaint that the J-SIIDS should have been provided by the government concerns an impropriety that was apparent from the face of the solicitation. Since this issue was not raised prior to bid opening it is untimely. 4 C.F.R. § 21.2(a)(1).

The request for reconsideration is denied.


James F. Hinohman
General Counsel